

FREQUENTLY ASKED QUESTIONS

Davis-Bacon Act

Rules and Regulations under the Infrastructure Investment and Jobs Act

Davis-Bacon is a federal law that requires local prevailing wages be paid on most federal and federally funded construction contracts. The Davis-Bacon Act ensures that federal government funds elevate labor standards for construction workers across the country, and that taxpayer dollars are used to ensure local wage and benefit standards, allowing responsible contractors to compete for federally funded or assisted construction contracts.

Below is a list of common questions and relevant considerations related to Davis-Bacon for potential applicants to the Oregon Department of Energy Section 40101(d) Grant: Preventing Outages and Enhancing the Resilience of the Electric Grid, which is funded by the U.S Department of Energy through the Infrastructure Investment and Jobs Act (IIJA).

1. What are the primary Davis-Bacon requirements for this funding opportunity?

Entities implementing projects, which involve construction contracts of more than \$2,000, must comply with federal labor laws. The \$2,000 threshold applies to any contract regardless of the combination of funding sources used to pay for it. It is not limited solely to what will be paid with federal funds, and the contract could be part of a project assisted in whole or in part with IIJA funds.

Applicants acknowledge that they will comply with all the DBA requirements, including but not limited to:

- a. Ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements flow down to and are incorporated into any applicable subcontracts or subrecipient awards.
- b. Ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.
- c. Being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- d. Receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- e. Maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the US DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- f. Conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the US DOE.
- g. Cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
- h. Posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

- i. Notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.
- j. Preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

2. Does Davis-Bacon apply to contractors paid with match funds?

Yes, Davis-Bacon requirements will apply to all project contracts which are \$2,000 or higher, regardless of funding source. For example, if \$50 dollars of Grid Resilience federal funding is applied to a contract, and \$20,000 of match is used, Davis-Bacon requirements are necessary for all work performed under the \$20,050 contract. All sources of cost match are considered part of the total contract cost, the cost share dollars are subject to the same Federal regulations as Federal dollars to the contract.

3. What is the Davis-Bacon definition of “prevailing wage”?

The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and select fringe benefits listed in a Davis-Bacon wage determination. The contractor's obligation to pay at least the prevailing wage listed in the contract wage determination can be met by paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. Prevailing wages, including fringe benefits, must be paid on all hours worked on the site of the work.

4. If there is a bargaining agreement or state prevailing wage law that applies to covered workers on the project, does my project still require Davis-Bacon compliance?

Yes, even if there are other wage-related requirements applicable to your project, Davis-Bacon still applies, including the requirement for weekly certified payroll submissions. If state prevailing wage laws or a bargaining agreement requires payment of higher wages for an individual, the highest wage identified across all requirements must be paid to the covered worker.

5. Must apprentices or trainees be paid at the same rates listed in the contract wage determination?

Yes, unless apprentices or trainees are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. This is the only exception to when apprentices or trainees may be employed at less than the rates listed in the contract wage determination.

6. How often do workers need to be paid and how does a contractor or subcontractor show proof of payment?

Contractors and subcontractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency. There will be a software program available to Grid Resilience subgrantees and their contractors for this purpose. They are also required to post the applicable Davis-Bacon wage determination with the [Davis-Bacon poster \(WH-1321\)](#) on the job site in a prominent and accessible place where they can be easily seen by the workers.

7. Where are Davis-Bacon wage determinations published?

Davis-Bacon wage determinations are published on the [System for Award Management \(SAM\)](#) website at <https://sam.gov/content/wage-determinations> for contracting agencies to incorporate them into covered contracts.

8. What are the most common issues related to Davis-Bacon compliance?

- a. Misclassification of laborers and mechanics.
- b. Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
- c. Inadequate recordkeeping, such as not counting all hours worked or not recording hours worked by an individual in two or more classifications during a day.
- d. Failure to maintain a copy of the bona fide apprenticeship program and individual registration documents for apprentices.
- e. Failure to submit certified payrolls weekly.
- f. Failure to post the Davis-Bacon poster and applicable wage determination.

9. What are the consequences of not complying with the provisions of the Davis-Bacon Act?

Contract payments may be withheld in sufficient amounts to satisfy liabilities of the contractor for unpaid wages, and for liquidated damages for overtime violations under the [Contract Work Hours and Safety Standards Act \(CWHSSA\)](#). In addition, violations of the Davis-Bacon labor standards may be grounds for contract termination, contractor liability for any resulting costs to the government, and debarment from future contracts for a period of three years.

Contractors may challenge the Wage and Hour Division's determinations of violations and debarment before an Administrative Law Judge (ALJ). Interested parties may appeal ALJ decisions to the Department's Administrative Review Board (ARB). Final ARB decisions may be appealed to and are enforceable through the federal courts.

The U.S. DOE has the authority to withhold reimbursement to ODOE, and ODOE has the authority to withhold payments to subrecipients for non-compliance. It is in the best interest of all parties to be vigilant in monitoring contractor payroll reports and invoices to ensure any violations are averted and/or rectified at the earliest opportunity.

10. Additional Resources

Any potential applicants interested in finding more information regarding Davis-Bacon requirements can review the following information:

1. [FedConnect Landing Page](#)
The link above is the ALRD FedConnect Page for IIJA Section 40101(d) Formula Grants to States and Indian Tribes for Preventing Outages and Enhancing the Resilience of the Electric Grid. Once on the landing page, you will see a description and an overview of this opportunity. To the right, you will see a list of the attached documentation and Amendment 7 is the most updated ALRD. To view any of the attachments, simply click the attachment name.
2. [40101\(d\) Frequently Asked Questions](#)
The link above is the updated FAQ pertaining to 40101(d) Formula Grants to States and Indian Tribes.
3. [Allocation of Funds](#)
The link above is DOE's Allocation of Funds under the IIJA Section 40101(d) – Formula Grants to States and Indian Tribes for Preventing Outages and Enhancing the Resilience of the Electric Grid.
4. [Davis-Bacon and Related Acts | U.S. Department of Labor \(dol.gov\)](#)
The link above provides additional guidance on how to comply with the Davis-Bacon provisions and clauses.
5. [Protections for Workers in Construction under the Bipartisan Infrastructure Law | U.S. Department of Labor \(dol.gov\)](#)
The link above provides additional guidance on how to comply with the Davis-Bacon provisions and clauses.
6. [Davis-Bacon poster \(WH-1321\)](#)
The link above is a PDF version of the Davis-Bacon poster that is required to be posted on job sites.
7. [Fact Sheet #66: The Davis-Bacon and Related Acts \(DBRA\) | U.S. Department of Labor \(dol.gov\)](#)
The link above is to the Davis-Bacon and Related Acts Fact Sheet published by the U.S. Department of Labor.
8. [US DOE's Desk Guide to the Davis-Bacon Act \(energy.gov\)](#)
The link above is the US DOE's Desk Guide intended to provide simple, non-technical guidance to help entities understand their obligations under the Davis-Bacon Act.

This document is intended to be for informational purposes only. If there is any conflict between information in this document and the awards agreement, the language in the awards agreement will prevail.

